

STATEMENT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1914

ALL CASES

THOMAS W. MORGAN, WARDEN OF THE UNITED
STATES PENITENTIARY AT LEAVENWORTH, KANSAS,
APPELLANT.

HARVEY A. DRYER, ALIAS OWEN DRYER, AND
CHARLES FRANKLIN ALIAS CHARLIE FRANKLIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

FILED FOR RECORD, A. 1914

(1914)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 685.

THOMAS W. MORGAN, WARDEN OF THE UNITED STATES PENITENTIARY AT LEAVENWORTH, KANSAS,
APPELLANT,

VS.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, AND
CHARLES PFEIFFER, ALIAS CHILLI PFEIFFER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

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Original. Print.

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In the District Court of the United States, District of Kansas,
first division.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, AND CHARLES
Pfeiffer, alias Chilli Pfeiffer, petitioners,

vs.

THOMAS W. MORGAN, WARDEN OF THE UNITED STATES
Penitentiary at Leavenworth, Kansas, respondent.

No. 1542.

TRANSCRIPT OF THE RECORD.

In the District Court of the United States, District of Kansas,
first division.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, AND CHARLES
Pfeiffer, alias Chilli Pfeiffer, petitioners,

vs.

THOMAS W. MORGAN, WARDEN OF THE UNITED STATES
Penitentiary at Leavenworth, Kansas, respondent.

No. 1542.

Citation.

To ALFONSO J. DEVINE, alias OLLIE DEVINE, and CHARLES PFEIFFER,
alias CHILLI PFEIFFER, and T. W. BELL, their attorney of record:

You are hereby cited and admonished to be and appear in the
United States Supreme Court at Washington, the District of Col-
umbia, sixty days from and after the date of this citation, pursuant
to an appeal filed in the clerk's office of the District Court of the
United States for the first division of the District of Kansas,
wherein Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer,
alias Chilli Pfeiffer, are petitioners and appellees, and Thomas W.
Morgan, warden of the United States Penitentiary at Leavenworth,
Kansas, is respondent and appellant, to show cause, if any there be,
why the judgment rendered against the said respondent, as in said
appeal mentioned, should not be corrected, and why speedy justice
should not be done to the parties in this behalf.

Witness, the honorable John C. Pollock, judge of the District
Court of the United States for the District of Kansas, this 23rd
day of September, A. D. 1914, and in the 138th year of the Inde-
pendence of the United States of America.

JOHN C. POLLOCK, *Judge.*

Service of the within and foregoing citation is hereby acknowl-
edged this 23d day of September, A. D. 1914.

T. W. BELL,
Atty. for Petitioners.

(Indorsed:) No. 1542. In the District Court of the United
States, District of Kansas, first division. Alfonse J. Devine, alias

Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, petitioners, vs. Thomas W. Morgan, respondent. Citation. Filed Sept. 24, 1914. Morton Albaugh, clerk.

(Copy.)

UNITED STATES OF AMERICA,

State of Kansas, ss:

In the United States District Court in and for the State of Kansas.

In the matter of the application of Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, for a writ of habeas corpus.

Petition.

Now comes the above-named Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, by T. W. Bell, their attorney, and applies to the above-named United States District Court and the honorable J. C. Pollock, judge of said court, for a writ of habeas corpus and alleges that the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, are restrained of their liberty by one T. W. Morgan, warden of the United States Federal Penitentiary, in the county of Leavenworth, in the State of Kansas, and the United States of America. And that such restraint is illegal, because the said court and judge who sentenced or pretended to sentence the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, to the said penitentiary, and thereby placing them in the custody and under the control of the above-named T. W. Morgan, had no such right, power, or authority to do so.

That such restraint is illegal, because the commitment or pretended commitment, held by the said T. W. Morgan, was not issued out of or by any court or judge who had jurisdiction, power, or authority to make, order, or issue any such commitment or pretended commitment; that such commitment or pretended commitment if legal has long since expired and stands for naught and are of no force and is without any power or authority to hold and to restrain these petitioners from their liberty. That under the laws of the United States in such cases it is provided that all persons sentenced to the Federal prison of the United States must be sent and sentenced to do hard labor while therein.

3 That no judgment was ever pronounced or rendered in such court against such petitioners whereby such commitment or pretended commitment could issue; that said restraint is illegal, because the laws of the United States of America and the statutes thereof do not give, delegate, or authorize any court in its jurisdiction power to pronounce sentence or judgment upon any of its citizens until such persons are legally before such court under the laws of the United States.

And the pretended commitment, judgment, and sentence, whereby the said T. W. Morgan seeks to restrain and does restrain these petitioners from their liberty, is void and stands for naught, according to the best knowledge and belief of the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, and that such restraint is not fully known to the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer.

Yet the said T. W. Morgan claims to be the warden and keeper of the above-named penitentiary and claims to hold the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, by virtue of a commitment or pretended commitment, a copy of which is hereby attached with a copy of the indictment, verdict, judgment, and sentence, which is marked Exhibit "A" and made a part hereof. and the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, claims that the above-named warden has no jurisdiction, power, or authority to hold them under the laws of the United States; that said restraint is illegal, unjust, excessive, and beyond any right, power, jurisdiction, and authority of the said T. W. Morgan.

Wherefore, the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, pray that a writ of "habeas corpus" issue, directed to the said T. W. Morgan, commanding him, the said T. W. Morgan, to have and bring the said Alphonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, before and into the said United States District Court, and the said T. W. Morgan at the same time be directed to file in said court

4 a copy of said commitment whereby he pretends to hold and does hold the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, in custody, and to have before and into the United States District Court at such time and place as the said court and judge shall direct and to do and receive whatever shall be ordered concerning Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, and have then and there said writ with a copy of said commitment as above described, and that the said United States District Court and the judge thereof discharge the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, and order and secure their release from such restraint, and the said T. W. Morgan do and abide by the order of the said court and judge.

T. W. BELL,

Attorney for Petitioners, Leavenworth, Kansas.

UNITED STATES OF AMERICA,

State of Kansas, ss:

T. W. Bell, of lawful age, after being first duly sworn, deposes and on oath says that he is the attorney for the petitioners, Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chillie Pfeiffer, mentioned in the above and foregoing petition, that he has read

over the same and know the contents therein contained and to the best of his knowledge and belief the same is true.

T. W. BELL.

Subscribed and sworn to before me this 3 day of Apr., A. D. 1914.

[SEAL.]

C. C. SMITH,

Clerk District Court.

The within-named petitioners, Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, waives their rights under the law of having themselves and body and the body of the within-named petitioners produced and being themselves personally before and in the court at the hearing of this petition for the release of said petitioners.

T. W. BELL,

Attorney for Petitioners.

EXHIBIT "A."

At a stated term of the District Court of the United States within and for the Sixth Judicial Circuit and Eastern Division of the Southern District of Ohio, begun and held at the court rooms in the city of Columbus, on the first Tuesday of June, begin also the sixth day of that month, in the year of our Lord one thousand nine hundred and eleven, and in the one hundred and thirty-fifth year of the independence of the United States of America.

Present: The Hon. John E. Sater, district judge.

Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA

vs.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE;
Martin T. Naddy, alias Jack Naddy;
and Charles Pfeiffer, alias "Chilli"
Pfeiffer.

No. 654.

Be it remembered that heretofore, to wit, on the 8th day of June, in the year of our Lord one thousand nine hundred and eleven, came the grand jurors of the United States of America, within and for the Eastern Division of the Southern District of Ohio, and presented to the court here their certain bill of indictment herein against said defendant, which said bill of indictment is clothed in the words and figures following, to wit:

BILL OF INDICTMENT.

THE UNITED STATES OF AMERICA,

Eastern Division of the Southern District of Ohio, ss:

In the District Court of the United States within and for the Eastern Division of the Southern District of Ohio, in the Sixth

Judicial Circuit, of the term of June, in the year of our Lord one thousand nine hundred and eleven.

6 The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the eastern division of said district, upon their oaths and affirmations present that Alfonso J. Devine, alias "Ollie" Devine, Martin F. Naddy, alias "Jack" Naddy, and Charles Pfeiffer, alias "Chilli" Pfeiffer, on, to wit, the thirteenth day of January, in the year one thousand nine hundred and eleven, in the county of Delaware, in the State of Ohio, and the circuit and eastern division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and forcibly break into and enter a building used in whole as a post office of the United States at Powell, Delaware County, Ohio, with intent then and there to commit larceny in such building and post office, to wit, to steal and purloin property and funds then and there in use by and belong to the Post Office Department of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Alfonso J. Devine, alias Ollie Devine, Martin T. Naddy, alias Jack Naddy, and Charles Pfeiffer, alias "Chilli" Pfeiffer, on, to wit, the thirteenth day of January, in the year one thousand nine hundred and eleven, in the county of Delaware, in the State of Ohio, in the circuit and eastern division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly steal, purloin, take and convey away certain property and moneys of the United States, then and there in use by and belonging to the Post Office Department of the United States, to wit, postage stamps and postal funds of the approximate amount and value of \$15.00, the exact amount and value whereof is unknown to these grand jurors, the said property and moneys of the United States then and there being located in the post office of the United States at Powell, Delaware County, Ohio, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. MCPHERSON,
United States Attorney, S. D. O.

(Endorsed:) Indictment for violation of secs. 192 and 190, U. S. Penal Code. A true bill. Harry H. Baird, foreman. Sherman T. McPherson, United States attorney, S. D. O.

8 And afterwards, to wit, on the 23rd day of January, A. D. 1912, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

ENTRY.

THE UNITED STATES

vs.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, } No. 654. Indictment.
 Martin T. Naddy, alias Jack Naddy, and }
 Charles Pfeiffer, alias "Chilli" Pfeiffer. }

This day again came the district attorney on behalf of the United States, and said defendant, Charles Pfeiffer, alias Chilli Pfeiffer, being present in court in custody of the marshal, and by leave of court withdraws his plea of not guilty heretofore entered herein and enters a plea of guilty in manner and form as charged in the said indictment and throws himself upon the mercy of the court, and the district attorney doth the like. And the district attorney moving for sentence, thereupon the court pronounced the following sentence to wit: That said defendant Charles Pfeiffer, alias "Chilli" Pfeiffer, on the first count of said indictment be confined in the United States penitentiary at Leavenworth, Kansas, for the period of three and one-half ($3\frac{1}{2}$) years and that he pay a fine of one hundred dollars (\$100) and the costs of prosecution, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two (2) years and that he pay the costs of prosecution, said sentences to be cumulative and not concurrent.

Whereupon said defendant was remanded into the custody of the marshal, to be by him committed to said penitentiary, pursuant to said sentence.

Thereupon there was issued out of the clerk's office of said
 9 court our certain final commitment in this cause directed to
 the marshal of said district and against said
 Final commitment. defendant, which said final commitment is
 clothed in the words and figures following, to wit:

District Court of the United States, Southern District of Ohio,
 Eastern Division.

THE UNITED STATES OF AMERICA

v.

CHARLES PFEIFFER, ALIAS "CHILLI" PFEIFFER. } No. 654. Indictment.

The defendant Charles Pfeiffer, alias "Chilli" Pfeiffer, having pleaded guilty as charged in the said indictment for violation of sections 192 and 190, U. S. Penal Code:

Thereupon the court pronounced the following sentence, to wit: That the said defendant Charles Pfeiffer, alias "Chilli" Pfeiffer, on the first count of said indictment be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of three

and one-half years and that he pay a fine of \$100.00 and the costs of prosecution; and on the second count of said indictment that he be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of two years and that he pay the costs of prosecution, said sentence to be cumulative and not concurrent.

This, therefore, is to command the marshal of said district to take the body of the said Charles Pfeiffer, alias "Chilli" Pfeiffer, and commit the same to the said penitentiary, pursuant to the above sentence.

Witness, the honorable John E. Sater, judge of the District Court of the United States, this 23rd day of January, A. D. 1912, and in the 136th year of the Independence of the United States of America.

Attest:

[SEAL.]

B. E. DILLEY,

Clerk of the United States District Court, S. D. O.,

By C. P. WHITE, Jr.,

Deputy.

10 And afterwards, to wit, on the 31st day of January, A. D. 1912, came the marshal of said district, to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to wit:

MARSHAL'S RETURN.

Received this writ at Columbus, Ohio, on January 23, 1912, and on January 26, 1912, executed same by delivering the within-named Charles Pfeiffer, alias Chilli Pfeiffer, into the custody of the warden of the United States penitentiary at Leavenworth, Kansas, as within in commanded.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.,

By ALBERT BAUER, *Deputy.*

Expenses, \$109.25.

THE UNITED STATES OF AMERICA,

Southern District of Ohio, Eastern Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a correct copy of the original indictment, journal entry, and final commitment as to the defendant Charles Pfeiffer, alias "Chilli" Pfeiffer, as the same appears on file and of record in the clerk's office of said court in the therein entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Columbus, Ohio, this 4th day of February, 1913.

[SEAL.]

B. E. DILLEY, *Clerk.*

By L. P. WHITE, Jr., *Deputy.*

- 11 In the District Court of the United States for the Southern District of Ohio, Eastern Division.

THE UNITED STATES

vs.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, Martin T. Naddy, alias Jack Naddy, and Charles Pfeiffer, alias Chilli Pfeiffer.	No. 654. Indictment.
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This day again came the district attorney, on behalf of the United States, and said defendant Alfonzo J. Devine, alias Ollie Devine, and Martin T. Naddy, alias Jack Naddy, being present in court, thereupon the defendant Alphonso J. Devine, alias Ollie Devine, by leave of court, withdraws his plea of not guilty, heretofore entered herein, and enters a plea of guilty in manner and form as charged in said indictment, and throws himself upon the mercy of the court, and the district attorney doth the like; and the district attorney moving for sentence, thereupon the court pronounced the following sentence, to wit: That said defendant Alphonso J. Devine, alias Ollie Devine, be confined in the United States penitentiary at Leavenworth, Kansas, for the term of four years on the first count of said indictment, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the costs of prosecution, said sentences to be cumulative and not concurrent.

That said defendant Martin T. Naddy, alias Jack Naddy, on the first count of said indictment be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two and one-half years, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the cost of prosecution, said sentence to be cumulative and not concurrent.

- 12 Said sentence as to the defendant, Martin T. Naddy, alias Jack Naddy, to be suspended during his good behavior and satisfactory conduct.

THE UNITED STATES OF AMERICA,

Southern District of Ohio, Eastern Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a correct copy of the original entry, entered June 20, 1911, as the same appears on file and of record in the clerk's office of said court, in the therein entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Columbus, Ohio, this 18th day of February, 1913.

[SEAL.]

B. E. DILLEY, *Clerk.*
By C. P. WHITE, Jr., *Deputy.*

(Endorsed:) No. 1542. Ex parte, Alfonso J. Devine et al, plaintiff. Petition for writ of habeas corpus. Filed Apr. 4, 1914. Morton Albaugh, clerk. T. W. Bell, attorney at law, Leavenworth, Kansas, Wulfekuhler Bank Building.

13 In the District Court of the United States, District of Kansas,
First Division.

IN THE MATTER OF THE APPLICATION OF ALFONSO
J. Devine, alias Ollie Devine, and Charles }
Pfeiffer, alias Chilli Pfeiffer, for a writ of } No. 1542.
habeas corpus.

Response.

Comes now Thomas W. Morgan and for his response to the application for a writ of habeas corpus herein says that he is the duly appointed, qualified, and acting warden of the United States penitentiary at Leavenworth, Kansas, and that as such warden he now has in his custody, as prisoners in said institution, the above-named Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, and that the said Devine was received at said penitentiary on the 22nd day of June, 1911, and that the said Pfeiffer was received at said institution on the 26th day of January, 1912, and that said petitioners are held and detained in said penitentiary by virtue of certain commitments issued out of the United States District Court for the Eastern Division of the Southern District of Ohio, as will more fully appear by duly certified copies of said commitments hereto attached, marked "Exhibit A," and by this reference made a part hereof.

Your respondent further shows to the court that the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, were indicted by the grand jury of the United States for the Eastern Division of the Southern District of Ohio at the June, 1911, term of said court upon an indictment containing two counts. The first count of said indictment charged the said petitioners with unlawfully and feloniously breaking and entering a building used in whole as a post office of the United States in violation of section 192 of the Criminal Code. The second count of said indictment charged the said petitioners with the offense of unlawfully and feloniously stealing, taking, and carrying away certain property and money of the United States in violation of section 190 of
14 the Criminal Code, as will more fully appear from a certified copy of the indictment hereto attached, marked "Exhibit B," and by this reference made a part hereof.

Your respondent further shows to the court that on the 20th day of June, 1911, the said Alfonso J. Devine, alias Ollie Devine, en-

tered a plea of guilty to the offenses charged in the said indictment, and that thereupon the court sentenced the said Devine upon the first count of said indictment to a term of four years' imprisonment in the United States penitentiary at Leavenworth, Kansas, and to a term of two years' imprisonment in said penitentiary on the second count of said indictment and further ordered and adjudged that said sentences be cumulative and not concurrent, as will more fully appear from the copy of the journal entry of judgment hereto attached, marked "Exhibit C," and by this reference made a part hereof.

Your respondent further shows to the court that on the 23rd day of January, 1912, the petitioner, Charles Pfeiffer, alias Chilli Pfeiffer, entered a plea of guilty to the charges alleged in the indictment, and thereupon the court sentenced said petitioner on the first count of said indictment to imprisonment in the United States penitentiary at Leavenworth, Kansas, for a term of three and one-half years and to pay a fine of one hundred (\$100.00) dollars and costs of prosecution, and on the second count that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two years and that said sentences be cumulative and not concurrent, as will more fully appear from a certified copy of the judgment and sentence hereto attached, marked "Exhibit D," and by this reference made a part hereof.

Your respondent is informed and believes and therefore states the fact to be that said petitioners were lawfully indicted, and that they pleaded guilty to the offenses charged and alleged in said indictment as set forth in said commitment and the judgment of sentence, and that said sentences are legal and valid.

15 Your respondent further shows to the court and avers that he stands ready to produce the bodies of the said Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, whenever lawfully required and to do and perform whatever may lawfully be required of him in the premises and prays that said petitioners be remanded to his custody.

THOS. W. MORGAN,
Respondent.

FRED ROBERTSON,
United States Attorney.

By L. S. HARVEY,
Asst. United States Attorney.

UNITED STATES OF AMERICA,

District of Kansas, county of Leavenworth, ss:

THOMAS W. MORGAN, being duly sworn, on oath says that he is the duly appointed, qualified, and acting warden of the United States penitentiary at Leavenworth, Kansas, and that he has read the within and foregoing response and knows the contents thereof, and that all the positive statements therein contained are true, and that such

statements and averments as are made on information and belief respondent believes them to be true.

THOS. W. MORGAN,
Respondent.

Subscribed and sworn to before me this 6th day of May, A. D. 1914,

[SEAL.]

THOS. C. TAYLOR,
Notary Public.

My commission expires Jan. 13, 1915.

16 District Court of the United States, Southern District of Ohio,
Eastern Division.

THE UNITED STATES OF AMERICA
vs.

ALPHONSO J. DEVINE, ALIAS OLLIE DEVINE. } No. 654. Indictment.

The defendant, Alphonso J. Devine, alias Ollie Devine, having pleaded guilty as charged in the said indictment for violation of section 192 and 190, U. S. Penal Code:

Thereupon the court pronounced the following sentence, to wit: That the said defendant, Alphonso J. Devine, alias Ollie Devine, on the first count of said indictment, be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of four years; and that he pay the costs of prosecution; and that on the second count of said indictment, he be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the costs of prosecution. Said sentences to be cumulative and not concurrent.

This, therefore, is to command the marshal of said district to take the body of the said Alphonso J. Devine, alias Ollie Devine, and commit the same to the said penitentiary pursuant to the above sentence.

Witness, the honorable John E. Sater, judge of the District Court of the United States, this 20th day of June, A. D. 1911, and in the 135th year of the independence of the United States of America.

Attest:

[SEAL.]

B. E. DILLEY,
Clerk of the U. S. District Court S. D. O.
By C. P. WHITE, Jr., *Deputy.*

A true copy.

EUGENE L. LEWIS,
U. S. Marshal.

A true copy.

A. J. RENOE,
Record Clerk, United States Penitentiary.

LEAVENWORTH, KANSAS, April 6, 1914.

17 District Court of the United States, Southern District of Ohio,
Eastern Division.

THE UNITED STATES OF AMERICA

vs.

CHARLES PFEIFFER, ALIAS "CHILLI" PFEIFFER.

No. 654. Indictment.

The defendant, Charles Pfeiffer, alias "Chilli" Pfeiffer, having pleaded guilty as charged in the said indictment for violation of sections 192 and 190, U. S. Penal Code:

Thereupon the court pronounced the following sentence, to wit: That the said defendant, Charles Pfeiffer, alias "Chilli" Pfeiffer, on the first count of said indictment, be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of three and one-half years, and that he pay a fine of \$100 and the costs of prosecution; and on the second count of said indictment, that he be imprisoned in the United States penitentiary at Leavenworth, Kansas, for a period of two years, and that he pay the costs of prosecution. Said sentences to be cumulative and not concurrent.

This, therefore, is to command the marshal of said district to take the body of said Charles Pfeiffer, alias "Chilli" Pfeiffer, and commit the same to the said penitentiary, pursuant to the above sentence.

Witness, the honorable John E. Sater, judge of the District Court of the United States, this 23rd day of January, A. D. 1912, and in the 136th year of the independence of the United States of America.

Attest:

[SEAL.]

B. E. DILLEY,

Clerk of the U. S. District Court S. D. O.

By C. P. WHITE, Jr., *Deputy.*

A true copy.

A. J. RENOE,

Record Clerk, United States Penitentiary.

LEAVENWORTH, KANSAS, April 6, 1914.

18 At a stated term of the District Court of the United States within and for the Sixth Judicial Circuit and Eastern Division of the Southern District of Ohio begun and held at the court rooms in the city of Columbus on the first Tuesday of December, being also the fifth day of that month, in the year of our Lord one thousand nine hundred and eleven, and in the one hundred and thirty-sixth year of the Independence of the United States of America.

Present: The honorable John E. Sater, district judge.

Among the proceedings had were the following, to wit:

THE UNITED STATES

vs.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, MARTIN T.

Naddy, alias "Jack" Naddy, and Charles Pfeiffer,
alias Chilli Pfeiffer.

No. 654.

Be it remembered that heretofore, to wit, on the 8th day of June, in the year of our Lord one thousand nine hundred and eleven, came

the grand jurors of the United States of America within and for the Eastern Division of the Southern District of Ohio and presented to the court here their certain bill of indictment herein against said defendant, which said bill of indictment is clothed in the words and figures following, to wit:

19 THE UNITED STATES OF AMERICA,

Eastern Division of the Southern District of Ohio, ss:

In the District Court of the United States within and for the Eastern Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the term of June, in the year of our Lord one thousand nine hundred and eleven.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within
1st count.
 Sec. 192, U. S. Criminal
 Code (5478 R. S.). and for the Eastern Division of said district, upon their oaths and affirmations present that

Alfonso J. Devine, alias "Ollie" Devine, Martin T. Naddy, alias "Jack" Naddy, and Charles Pfeiffer, alias "Chilli" Pfeiffer, on, to wit, the thirtieth day of January, in the year one thousand nine hundred and eleven, in the county of Delaware, in the State of Ohio, in the Circuit and Eastern Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and forcibly break into and enter a building used in whole as a post office of the United States at Powell, Delaware County, Ohio, with intent then and there to commit larceny in such building and post office, to wit, to steal and purloin property and funds then and there in use by and belonging to the Post Office Department of the United States contrary to the form of the statute in such case, made and provided, and against the peace and dignity of the United States of America.

20 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Alfonso J. Devine, alias Ollie Devine; Martin T. Naddy, alias Jack Naddy; and Charles Pfeiffer, alias "Chilli"

Pfeiffer, on, to wit, the thirtieth day of January, in the year one thousand nine hundred and eleven, in the county of Delaware, in the State of Ohio, in the Circuit and Eastern Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly steal, purloin, take, and convey away certain property and moneys of the United States, then and there in use by and belonging to the Post Office Department of the United States, to wit, postage stamps and postal funds, of the approximate amount and value of \$15.00, the exact amount and value whereof is unknown to these grand jurors, the said property and moneys of the United States then and there being located in the post office of the United States at Powell, Delaware County, Ohio, con-

2d count.
 Sec. 190, U. S.
 Criminal Code.

trary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

(Endorsed:) Indictment for violation of secs. 192 and 190 U. S. Penal Code. A true bill. Harry H. Baird, foreman. Sherman T. McPherson, United States attorney, S. D. O.

21 And afterwards, to wit, on the 20th day of June, A. D., 1911, an entry was made upon the journal of said court, in this cause, which said entry is clothed in the words and figures following, to wit:

ENTRY.

THE UNITED STATES

vs.

ALPHONSO J. DEVINE, ALIAS OLLIE DEVINE; Martin T. Daddy, alias Jack Naddy; and Charles Pfeiffer, alias Chilli Pfeiffer.	} No. 654. Indictment.
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This day again came the district attorney on behalf of the United States and said defendants, Alphonso J. Devine, alias Ollie Devine; and Martin T. Naddy, alias Jack Naddy, being present in court, thereupon the defendant, Alphonso J. Devine, alias Ollie Devine, by leave of court withdraws his plea of not guilty heretofore entered herein and enters a plea of guilty in manner and form as charged in said indictment, and throws himself upon the mercy of the court, and the district attorney doth the like. And the district attorney moving for sentence, thereupon the court pronounced the following sentence, to wit: That said defendant, Alphonso J. Devine, alias Ollie Devine, be confined in the United States penitentiary at Leavenworth, Kansas, for the term of four years on the first count of said indictment, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the costs of prosecution, said sentences to be cumulative and not concurrent.

That said defendant, Martin T. Naddy, alias Jack Naddy, on the first count of said indictment be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two and one-half years, and on the second count of said indictment that he
22 be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two and one-half years, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the costs of prosecution, said sentences to be cumulative and not concurrent.

Said sentence as to the defendant Martin T. Naddy, alias Jack Naddy, to be suspended during his good behavior and satisfactory conduct.

Thereupon, there was issued out of the clerk's office of said court our certain final commitment in this cause, directed to the marshal of said district and against said defendant, which said final commitment is clothed in the words and figures following, to wit:

Final commitment.

FINAL COMMITMENT.

District Court of the United States, Southern District of Ohio,
Eastern Division.

THE UNITED STATES OF AMERICA	} No. 654. Indictment.
vs.	
ALPHONSO J. DEVINE, ALIAS OLLIE DEVINE.	

The defendant, Alphonso J. Devine, alias Ollie Devine, having pleaded guilty as charged in the said indictment for violation of section 192 and 190, U. S. Penal Code,

Thereupon, the court pronounced the following sentence, to wit: That the said defendant, Alphonso J. Devine, alias Ollie Devine, on the first count of said indictment be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of four years, and that he pay the costs of prosecution, and on the second count of said indictment that he be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of two
23 years, and that he pay the costs of prosecution. Said sentences to be cumulative and not concurrent.

This, therefore, is to command the marshal of said district to take the body of the said Alphonso J. Devine, alias Ollie Devine, and commit the same to the said penitentiary pursuant to the above sentence.

Witness, the honorable John E. Sater, judge of the District Court of the United States, this 20th day of June, A. D. 1911, and in the 135th year of the independence of the United States of America.

Attest:

[SEAL.]

B. E. DILLEY,

*Clerk of the United States District Court, S. D. O.,*By C. P. WHITE, Jr., *Deputy.*

And afterwards, to wit, on the 28th day of June, A. D. 1911, came the marshal of said district to whom the said writ was in form afore-said directed and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to wit:

MARSHAL'S RETURN.

Received this writ at Columbus, Ohio, on June 21, 1911, and on June 22, 1911, executed same by delivering the body of the within-

named Alphonso J. Devine, alias Ollie Devine, into the custody of the warden of the United States penitentiary at Leavenworth, Kansas, as within it is commanded.

EUGENE L. LEWIS,
U. S. Marshal, S. D. O.

Expense, \$51.49.

24 And afterwards, to wit, on the 23rd day of January, A. D. 1912, an entry was made upon the journal of said court in this cause, which said entry is clothed in the words and figures following, to wit:

ENTRY.

THE UNITED STATES

vs.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE;
Martin T. Naddy, alias Jack Naddy;
and Charles Pfeiffer, alias "Chilli"
Pfeiffer.

No. 654. Indictment.

This day again came the district attorney on behalf of the United States, and said defendant, Charles Pfeiffer, alias Chilli Pfeiffer, being present in court in custody of the marshal and by leave of court withdraws his plea of not guilty heretofore entered herein and enters a plea of guilty in manner and form as charged in the said indictment and throws himself upon the mercy of the court, and the district attorney doth the like. And the district attorney moving for sentence, thereupon the court pronounced the following sentence, to wit: That said defendant, Charles Pfeiffer, alias "Chilli" Pfeiffer, on the first count of said indictment be confined in the United States penitentiary at Leavenworth, Kansas, for the period of three and one-half (3½) years, and that he pay a fine of one hundred dollars (\$100) and the costs of prosecution, and on the second count of said indictment that he be confined in the United States penitentiary at Leavenworth, Kansas, for the period of two (2) years, and that he pay the costs of prosecution, said sentences to be cumulative and not concurrent.

Whereupon said defendant was remanded into the custody of the marshal to be by him committed to said penitentiary, pursuant to said sentence.

25 Thereupon there was issued out of the clerk's office of said court our certain final commitment in this cause, directed to the marshal of said district and against said defendant, which said final commitment is clothed in the words and figures following, to wit:

FINAL COMMITMENT.

District Court of the United States, Southern District of Ohio,
Eastern Division.

THE UNITED STATES OF AMERICA

vs.

CHARLES PFEIFFER, ALIAS "CHILLI" PFEIFFER.

No. 654. Indictment.

The defendant, Charles Pfeiffer, alias "Chilli" Pfeiffer, having pleaded guilty as charged in the said indictment for violation of sections 192 and 190, U. S. Penal Code:

Thereupon the court pronounced the following sentence, to wit: That the said defendant, Charles Pfeiffer, alias "Chilli" Pfeiffer, on the first count of said indictment, be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of three and one-half years, and that he pay a fine of \$100.00 and the costs of prosecution; and on the second count of said indictment, that he be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the period of two years, and that he pay the costs of prosecution. Said sentences to be cumulative and not concurrent.

This, therefore, is to command the marshal of said district to take the body of the said Charles Pfeiffer, alias "Chilli" Pfeiffer, and commit the same to the said penitentiary pursuant to the above sentence.

26 Witness, the honorable John E. Sater, judge of the District Court of the United States, this 23rd day of January, A. D. 1912, and in the 136th year of the independence of the United States of America.

Attest:

[SEAL.]

B. E. DILLEY,

Clerk of the United States District Court, S. D. O.

By C. P. WHITE, Jr., *Deputy.*

And afterwards, to wit, on the 31st day of January, A. D. 1912, came the marshal of said district to whom the said writ was in form aforesaid directed and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to wit:

MARSHAL'S RETURN.

Received this writ at Columbus, Ohio, on January 23, 1912, and on January 26, 1912, executed same by delivering the within-named Charles Pfeiffer, alias Chilli Pfeiffer, into the custody of the warden of the United States penitentiary at Leavenworth, Kansas, as within commanded.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.

By ALBERT BAUER, *Deputy.*

Expenses, \$109.25.

27 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a correct transcript of the record, in the therein-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Columbus, Ohio, this 28th day of April, 1914.

[SEAL.]

B. E. DILLEY, *Clerk.*

By C. P. WHITE, Jr., *Deputy.*

(Endorsed:) No. 1542. In the District Court of the United States, District of Kansas, First Division. In the matter of the application of Alfonso J. Devine, alias Ollie Devine; and Charles Pfeiffer, alias Chilli Pfeiffer, for a writ of habeas corpus. Response. Fred Robertson, United States attorney, Topeka, Kansas, by L. S. Harvey, asst. U. S. attorney, Topeka, Kansas. Filed May 7, 1914. Morton Albaugh, clerk.

28 In the District Court of the United States, District of Kansas, First Division.

IN THE MATTER OF THE APPLICATION OF ALFONSO J. Devine, alias Ollie Devine, and Charles Pfeiffer, } No. 1542.
 alias Chilli Pfeiffer, for a writ of habeas corpus. }

Agreed statement of facts.

It is agreed by and between the petitioner and the respondent that the acts of larceny referred to in count two of the indictment in this case were done and performed after entering the building used as a post office, as set forth in count one of the indictment, and that such acts of larceny were performed by the petitioners while in the said post office under the entry set forth in count one of the indictment.

The purpose of this stipulation is to show the court that the acts of larceny charged and referred to in counts one and two of the indictment herein were all committed at the same time, in the said post office, under the one entry of the said building.

This agreement may be used upon the hearing and trial of this proceeding by either party hereto as evidence of the facts herein set forth.

Given under our hands this first day of May, 1914.

T. W. BELL,

Attorney for Petitioners.

FRED ROBERTSON,

United States Attorney for the District of Kansas,

Attorney for Respondent.

(Endorsed:) No. 1542. In the District Court of the United States, District of Kansas, First Division. In the matter of the application of Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, for a writ of habeas corpus. Agreed statement of facts. Filed July 3, 1914, as of May 1, 1914. Morton Albaugh, clerk.

29

(Copy.)

STATE OF KANSAS,

Leavenworth Co., ss:

In the United States District Court in and for the State of Kansas.

In the matter of the application of Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, for a writ of habeas corpus.

Order discharging petitioner.

Be it remembered that at a sitting of the United States District Court of America for the District of Kansas, begun and held at the city of Kansas City, in said district, on the 8th day of May, A. D. 1914, the Hon. John C. Pollock sitting, the following proceedings among others were had and appear of record in words and figures as follows:

FRIDAY, May 8, 1914.

In the matter of Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, habeas corpus. No. —.

The above-entitled matter having heretofore been submitted to the court on oral argument and briefs of counsel and now on this 8th day of May, A. D. 1914, said matter comes on for final consideration and the court having considered said petition and application for writ of habeas corpus together with arguments and brief of counsel, and being well advised in the premises.

The court finds that the sentence and judgment upon which the petitioner is now held by the respondent herein, is illegal in this, that the said judgment and sentence causing this petitioner to be confined in the Federal prison at Leavenworth, Kansas, for a term of years on several and distinct counts and convictions alleged in said indictment, is illegal in this, to wit: That all judgments and sentences on each and every count and conviction is declared
30 illegal, and the writ of habeas corpus and application for release upon the several counts is denied on the first count, the first judgment and sentence, and it is the order of the court that these petitioners be held in the penitentiary and remanded to the warden of said penitentiary and be compelled and required to serve out such sentence and judgment on the first count, and that the sentence and

judgment on all, each, and every remaining count to be declared illegal, and the writ shall issue discharging said petitioners from said prison and from the custody of said warden when they and each of them have served the sentence upon the first count, and it is the order of this court that the said respondent and warden, Thomas W. Morgan, of the United States penitentiary, thereby and by order of this court discharge and release Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, from custody and from such Federal prison as above alleged, when they and each of them has served the full term of years under the law for the judgment and sentence upon the first count and the first judgment and sentence herein their commitment which is held by the warden of said penitentiary, and that they and each of them be allowed to go hence without day, to each and all of which the United States of America doth object and except.

Witness that Hon. John C. Pollock, judge of the District Court of the United States for the District of Kansas, this 8th day of May, in the year of our Lord one thousand nine hundred and fourteen.

JOHN C. POLLOCK,

Judge of United States District Court.

(Endorsed:) No. 1542. (Alfonso J. Devine, et al. vs. Thomas W. Morgan, warden. Order. Filed May 8, 1914. Morton Albaugh, clerk.

31 In the District Court of the United States, District of Kansas,
First Division.

IN THE MATTER OF THE APPLICATION OF	} No. 1542.
Alfonso J. Devine, alias Ollie Devine,	
and Charles Pfeiffer, alias Chilli	
Pfeiffer, for a writ of habeas corpus.	

Memoranda opinion.

The petitioners in this case present their application for a writ of habeas corpus to be discharged from commitment issued on judgment imposed against them in the District Court of the United States for the Eastern Division of the Southern District of Ohio.

The facts as shown by the record are in substance as follows: At the June, 1911, term of the District Court of the United States for the Eastern Division of the Southern District of Ohio, the grand jury returned an indictment against the petitioners. The indictment contains two counts. The first count is drawn under section 192 of the Penal Code and charges the petitioners with having on "the 13th day of January, 1911, in the county of Delaware, in the State of Ohio, * * * did then and there unlawfully and forcibly break into and enter a building used in whole as a post office of the United States, at Powell, Delaware County, Ohio, with intent then and

there to commit larceny in such building and post office, to wit, to steal and purloin property and funds then and there in use by and belonging to the Post Office Department of the United States."

The second count was drawn under section 190 of the Penal Code and charges that the petitioners on the same date, to wit, "the 13th day of January, 1911, in the county of Delaware, in the State of Ohio, did then and there unlawfully and knowingly steal, purloin, take, and convey away certain property and moneys of the United States then and there in use by and belonging to the Post Office Department of the United States, to wit, postage stamps and postal funds of the approximate amount and value of fifteen dollars (the exact amount and value thereof is unknown to these grand jurors), the said property and moneys of the United States then and there belonging to the post office of the United States at Powell, Delaware County, Ohio."

As grounds for the issuance of the writ the application alleges in substance that the petitioners are restrained of their liberty by T. W.

32 Morgan, warden of the United States penitentiary at Leavenworth, Kansas, and that such restraint is illegal and without warrant or authority of law, and that they have each practically served the full term of imprisonment which they could legally be required to serve under the sentence of the court, and that they are being deprived of their liberty without due process of law.

Upon the argument counsel for petitioners urged the foregoing objections to the sentence pronounced upon the petitioners on the second count of the indictment, and contend that such sentence placed the petitioners twice in jeopardy for the same offense, in violation of that portion of amendment five of the Constitution of the United States, which reads as follows: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * * nor be deprived of life, liberty, or property without due process of law."

On the 20th day of June, 1911, the petitioner, Alfonso J. Devine, alias Ollie Devine, entered a plea of guilty "in manner and form as charged in said indictment." He was thereupon sentenced to "be confined in the United States penitentiary at Leavenworth, Kansas, for the term of four years on the first count of the indictment, and on the second count of said indictment that he be confined in (said prison) for a period of two years and pay the cost of prosecution, said sentences to be cumulative and not concurrent."

On the 23rd day of January, 1912, Charles Pfeiffer, alias Chilli Pfeiffer, entered his plea of guilty "as charged in the indictment." He was sentenced to "be imprisoned in the United States penitentiary at Leavenworth, Kansas, for a period of three and one-half years on the first count of the indictment, and to pay a fine of one hundred dollars and cost of prosecution; and on the second count of said indictment that he be imprisoned in (said prison) for a period of two years; said sentences to be cumulative and not concurrent.

It is contended by the district attorney on behalf of the respondent that the sentence on the second count of the indictment does not twice jeopardize the petitioners for the same offense; and that the offense of larceny, as denounced by section 190 of the Penal Code, may be punished separately and cumulatively with the offense of burglary, as denounced by section 192, even though the two criminal acts be committed as at the same time, with the same criminal intent.

33 Counsel has stipulated in writing that "the acts of larceny referred to in count two of the indictment in this case were done and performed after entering the building used as a post office, as set out in count one of the indictment, and that such acts of larceny were performed by the petitioners while in the said post office under entry set out in count one of the indictment." Under the facts thus stipulated, this case falls squarely within the rule announced by the Circuit Court of Appeals for this, the Eighth Circuit, in the case of *Munson vs. McClaughry*, 198 Fed., 72.

I find, therefore, that the sentence imposed on the petitioners under the second count of the indictment is illegal and void, and that the petitioners are deprived of their liberty without due process of law, and that by reason of said sentence have been jeopardized twice for the same offense in violation of their legal and constitutional rights.

Let the writ issue discharging the petitioners from imprisonment at the expiration of their term of confinement under the first count of the indictment. It is so ordered.

To which order the respondent excepts.

JOHN C. POLLOCK,
Judge.

KANSAS CITY, KANSAS, *May 8th, 1914.*

Filed in the District Court on May 8, 1914.

34 In the District Court of the United States, District of Kansas,
First Division.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, AND CHARLES
Pfeiffer, alias Chilli Pfeiffer, petitioners,

vs.

THOMAS W. MORGAN, WARDEN OF THE UNITED STATES
penitentiary at Leavenworth, Kansas, respondent.

No. 1542.

Petition for appeal.

The above-named respondent conceiving himself aggrieved by the decree made and entered on the 8th day of May, 1914, in the above-entitled cause, does hereby appeal from said order and decree to the United States Supreme Court for the reasons specified in the assignments of error, which is filed herewith, and prays that this appeal

may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the said United States Supreme Court.

FRED ROBERTSON,
United States Attorney,
L. S. HARVEY,
Assistant United States Atty.,
Attorneys for Respondent.

Now, on this 23rd day of September, A. D. 1914, the foregoing claim of appeal is allowed.

JOHN C. POLLOCK,
Judge.

35 In the District Court of the United States, District of Kansas, First Division.

ALFONSO J. DEVINE, ALIAS OLLIE DEVINE,
and Charles Pfeiffer, alias Chilli Pfeiffer, petitioners.

vs.

THOMAS W. MORGAN, WARDEN OF THE
United States penitentiary at Leavenworth, Kansas, respondent.

No. 1542.

Assignments of error.

Comes now the above named respondent and shows to the court that in the record and proceedings in the above-entitled cause, lately pending in the court, there is manifest error in this, to wit:

First. The court erred in holding that the sentence pronounced upon the second count of the indictment was illegal and void, and in violation of amendment five of the Constitution of the United States in that said sentence placed petitioners twice in jeopardy for the same offense.

Second. The court erred in holding that the act of larceny charged in the second count of the indictment could not be punished cumulatively with the offense of burglary charged in the first count of the indictment.

Third. The court erred in granting the writ of habeas corpus and directing the discharge of the petitioners at the expiration of the term of imprisonment imposed upon the first count of the indictment.

Whereas by the law of the land, the said writ of habeas corpus should have been denied, and the petitioners remanded to the United States penitentiary and the custody of the respondent to serve out their sentences as imposed by the trial court on the first and second counts of the indictment.

36 Wherefore, respondent prays that the order and judgment aforesaid may be reversed, set aside, and held for naught, and for such other relief as may be proper in the premises.

FRED ROBERTSON,
United States Attorney,

L. S. HARVEY,
Assistant United States Attorney,
Attorneys for Respondent.

(Endorsed:) No. 1542. In the District Court of the United States, District of Kansas, First Division. Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer, petitioners, vs. Thomas W. Morgan, respondent. Petition for appeal and assignments of error. Filed Sept. 24, 1914. Morton Albaugh, clerk. Fred Robertson, United States attorney, Topeka, Kansas, by ———, assistant U. S. attorney, Topeka, Kansas.

37 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Morton Albaugh, clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record and proceedings in said court in the matter of the application of Alfonso J. Devine et al. for writ of habeas corpus, case No. 1542, in said court.

I further certify that the original citation is attached hereto and returned herewith.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said District of Kansas, this 26th day of September, 1914.

[SEAL.]

MORTON ALBAUGH,
Clerk.

(Endorsement on cover:) File No. 24429. Kansas, D. C. U. S. Term No. 685. Thomas W. Morgan, warden of the United States penitentiary at Leavenworth, Kansas, appellant, vs. Alfonso J. Devine, alias Ollie Devine, and Charles Pfeiffer, alias Chilli Pfeiffer. Filed November 6, 1914. File No. 24429.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THOMAS W. MORGAN, WARDEN OF THE United States Penitentiary at Leaven- worth, Kansas, Appellant, v. ALFONSO J. DEVINE, ALIAS OLLIE DEVINE, and Charles Pfeiffer, alias Chilli Pfeiffer.	}	No. 685.
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*APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF KANSAS.*

MOTION BY THE APPELLANT TO ADVANCE.

Comes now the Solicitor General and moves the court to advance the above-entitled cause for hearing on a day convenient to the court during the present term.

A petition for a writ of habeas corpus was filed in the district court by the appellees, praying for their release and discharge from the custody of the warden of the Leavenworth prison on the ground *inter alia* that the judgment, sentence, and commitment under which they were restrained is void and their restraint and imprisonment illegal.

Appellees were indicted jointly for violation of sections 190 and 192 of the Criminal Code of the United States. The indictment contained two counts. The first count charged appellees with forcibly breaking into a building used as a post office of the United States, at Powell, Delaware County, Ohio, with intent to commit larceny therein, in violation of section 192. The second count charged appellees with the larceny of postage stamps, etc., located in said post office, in violation of section 190. The acts of larceny charged in count 2 were done and performed after entering the building and while appellees were in the building under entry as set out in the first count of the indictment.

At the trial Pfeiffer pleaded guilty "as charged in the indictment," and was sentenced on the first count to three and one-half years in the penitentiary at Leavenworth, and to pay a fine of \$100 and the costs of prosecution, and on the second count to two years in the same penitentiary, said sentences to be cumulative.

Devine entered a plea of guilty "in the manner and form as charged in the indictment," and was sentenced on the first count to four years in the penitentiary at Leavenworth, and on the second count to two years in the same penitentiary, and to pay the costs of the prosecution, said sentences to be cumulative.

At the time of filing the petition for the writ of habeas corpus herein the sentences under the first count had practically expired.

The writ was ordered to issue, and after hearing an order was entered discharging the appellees from imprisonment at the expiration of their respective terms of confinement under the first count of the indictment. The court held:

1. That the sentence imposed upon appellees under the second count of the indictment was illegal and void.

2. That the appellees were deprived of their liberty without due process of law.

3. That by reason of said sentence appellees were placed in jeopardy twice for the same offense, in violation of their constitutional rights.

Appellees are now at large on bail. As the decision of this court will determine whether in future prosecutions of this character the defendant may be found guilty of the separate crimes defined in the sections referred to when the acts are performed at one and the same time, and therefore sentenced to the punishment provided in both sections, an early disposition of the cause is desirable.

Notice of this motion has been served upon opposing counsel.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1915.

